

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 13, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2647**

**Cir. Ct. No. 2012TR3547**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**COUNTY OF FOND DU LAC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KORRY L. ARDELL,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Fond du Lac County:  
PETER L. GRIMM, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Korry Ardell appeals the circuit court's denial of his motion to reopen a default judgment entered against him after he failed to

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

appear for a plea hearing on his speeding ticket. *See* WIS. STAT. § 346.57(4)(h). Ardell moved to reopen the judgment, claiming that he could not appear because he was out of town working. The circuit court denied Ardell's motion, and Ardell appeals, arguing that the circuit court erroneously exercised its discretion in denying his motion to reopen because extraordinary circumstances, excusable neglect, and due process supported vacating the default judgment. We reject Ardell's arguments and affirm.

¶2 The chronology of this case is as follows. Ardell was cited for speeding on March 29, 2012, with an appearance date of April 16, 2012. On March 30, 2012, Ardell wrote to the court indicating he wanted to plead not guilty and wanted a jury trial. Ardell also included a discovery demand with that letter, which was filed on April 2, 2012. The case was scheduled for a pretrial conference on May 2, 2012, which Ardell attended. The district attorney's office and Ardell failed to reach an agreement, and the case was set for a plea hearing on May 22, 2012, and jury trial on June 28, 2012. Ardell did not appear at the May 22, 2012 hearing and the court entered default judgment against him. Ardell moved to reopen the judgment, and the motion was set to be heard on July 25, 2012. Ardell requested to appear by telephone at the July 25, 2012 hearing. The circuit court denied Ardell's request to appear by telephone, but, over the prosecution's objection, agreed to adjourn the date because Ardell had faxed in a letter saying he would be out of town working. The motion hearing was rescheduled for October 8, 2012, at which time the circuit court heard argument and denied Ardell's motion to reopen the default judgment.

¶3 In a civil traffic matter, the circuit court shall reopen a default judgment if "the defendant ... shows ... that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect." WIS. STAT. § 345.37(1)(b).

Whether to reopen the judgment is a matter for the circuit court's discretion; we will not overturn the circuit court's decision unless it is clearly erroneous. *Schauer v. DeNeveu Homeowners Ass'n*, 194 Wis. 2d 62, 70-71, 533 N.W.2d 470 (1995) (interpreting WIS. STAT. § 806.07(1), of which paragraph (a) mirrors § 345.37(1)(b) standard).

¶4 Ardell did not present any facts to show that his failure to appear at the plea hearing was due to mistake, inadvertence, surprise, or excusable neglect. Ardell claimed in his motion to reopen the judgment, and now claims on appeal, that he “got stuck working out of town and was unable to make it to the hearing.” Ardell called the court just prior to the hearing to say he could not appear because he was “stuck working out of town.” This was the only explanation Ardell gave for his failure to appear. The circuit court concluded that Ardell had presented no basis for reopening the case and denied Ardell's motion to reopen. The court indicated its understanding that people with jobs must sometimes rearrange their schedules to appear in court. The court noted that if Ardell had written the court prior to the hearing date, as he had done regarding the July 25, 2012 hearing, “that date could have been potentially rearranged,” or Ardell could have hired an attorney to appear for him, “so there are definitely other alternatives that were available.” The court stated, “You knew about the court date, and you chose to go to work and not come to court. That's a choice you made. It's not excusable.” The court also concluded that there was no basis for Ardell's defense that the radar device used to detect his speed was inaccurate, as Ardell had provided no support for this theory. The circuit court's decision does not demonstrate an erroneous exercise of discretion, and we affirm.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

